

LLOYD W. LEVI

IBLA 75-153

Decided March 19, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offer F-644.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas leases: Patented or Entered Lands

An oil and gas lease offer must be rejected when, before the lease offer has been accepted, the land applied for has been patented with no reservation of oil and gas to the United States.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Patented or Entered Lands

It is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application.

APPEARANCES: Lloyd Levi, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lloyd Levi appeals from a decision dated August 8, 1974, by the Alaska State Office, Bureau of Land Management, rejecting oil

and gas lease offer F- 644, filed December 19, 1967, for Block 2, T. 2 N., R. 23 E., U.M., for the reason that the lands applied for have been patented to the State of Alaska.

On December 28, 1967, the offeror was notified that the offer was included in a Native protest and that further action on the offer would be delayed until the protest was resolved. On December 9, 1968, the State of Alaska filed selection application F 10329 for, inter alia, the lands described in this offer.

Pursuant to Departmental policy, oil and gas lease offers in Alaska filed in accordance with the regulations then applicable for lands available to such filing prior to January 17, 1969, the date PLO 4582 withdrew from mineral leasing all public lands in Alaska, were suspended until the land was opened to mineral leasing or until title to the land and minerals was transferred from Federal ownership.

Appellant contends that, as his lease offer was filed prior to the Native protest as well as the State selection application, the offer should have been accepted and a lease issued.

The law is well-settled that if an oil and gas lease is to be issued for a particular tract, it must be issued to the qualified person who first applied. The Department, however, has plenary discretion to refuse to issue any lease at all for such tract. Udall v. Tallman, 380 U.S. 1 (1965), rehearing denied, 380 U.S. 989 (1965). The filing of a noncompetitive oil and gas lease offer does not generate any legal interest, Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966), other than the preference right accorded to the first qualified applicant. Even where an applicant is the first-qualified applicant the Department retains its discretion to reject his application. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960). An applicant has no right to compel a lease under the Mineral Leasing Act, Pease v. Udall, 332 F.2d 62 (9th Cir. 1964).

The regulations implementing the Alaska Statehood Act, in 43 CFR 2627.3, in effect when the appellant filed his offer and now, provide in pertinent part:

(B)(2) Under the act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska whether or not they are surveyed and whether or not they contain mineral deposits.

* * * * *

Conflicting applications and offers for mineral leases and permits, except for preference right

applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management in accordance with this section.

[1] When the State selection was approved and patent issued March 27, 1974, the land was removed from jurisdiction of the Federal government. An oil and gas lease offer must be rejected when the land applied for has been patented with no reservation of oil and gas to the United States, before acceptance of the lease offer. El Paso Products Company, 10 IBLA 116 (1973).

[2] Furthermore, it is proper to reject an oil and gas lease offer for Alaskan land to the extent of conflict with an Alaskan selection application after the application has been tentatively approved even though the offer was filed before the selection application. Union Oil Company of California, A- 29907 (February 20, 1964). Under the Department's regulations, supra, relating to grants to the State of Alaska an oil and gas lease offer must be rejected when approval is given to a subsequently filed selection by the State of Alaska. J. L. McCarrey, Jr., A-28436 (November 14, 1960).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge

